Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

October Term 1994

CHRISTA M. OKON,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

CHRISTA M. OKON
Petitioner in propria persona
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(505) 986-3441

QUESTIONS PRESENTED

1. Whether United States Tax Court properly retained subject matter jurisdiction, notwithstanding petitioner's Internal Revenue Service generated Individual Master File transcripts showing that the Notices of Deficiency (upon which Court's jurisdiction was based) had been processed in error, that petitioner owed no federal income taxes for the years at issue and had no requirement to file Forms 1040 those years.

2. Did the Tenth Circuit Court of Appeals err in determining that petitioner's two motions to vacate the Tax Court's orders, separated by vacated and revised order, constitute "tacking" together of motions for purposes of running of appeal period?

3. What statute imposes the federal income tax sought to be collected from Okon, and is the tax a direct or an indirect tax?

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IN THE

Supreme Court of the United States

October Term 1994

CHRISTA M. OKON,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner, Christa M. Okon, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals for the Tenth Circuit entered in the above entitled proceeding on June 16, 1994 (rehearing denied July 18, 1994), and the order of the Tax Court entered on January 27, 1993 (subsequently vacated) and on April 23, 1993.

OPINIONS BELOW

The opinion of the Court of Appeals for the Tenth Circuit is reported at 26 F.3d 1025 (10th Cir. 1994), and is reprinted in the appendix hereto, *infra*, p.A-1. The Tax Court Memorandum Opinion entered January 21, 1993 is reported at RIA TC

Memo § 93,023, and is reprinted in the appendix hereto, *infra*, p.B-1. The Decision(s) and Judgment(s) of the Tax Court (January 27 and April 23, 1993) are reprinted in the appendix hereto, *infra, p.C-1 and D-1*, respectively.

JURISDICTION

The date and time of entry of judgment sought to be reviewed herein is June 16, 1994. Following entry of the judgment, Okon filed a petition for rehearing which was denied by the Court of Appeals on July 18, 1994.

The statutory provision conferring jurisdiction on this Court to review the decision in question by writ of certiorari is 28 U.S.C. Section 1254(1).

STATUTES AND REGULATIONS INVOLVED

26 U.S.C. SECTION 1, TAX IMPOSED

There is hereby imposed on the taxable income of—(married, single, etc).

26 C.F.R. 1.1-1, TAX ON INDIVIDUALS

(a) General rule. (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States. . . .(Reprinted more fully in Appendix G).

26 C.F.R. 602.101

Office of Management and Budget Table of Control Numbers under the Paperwork Reduction Act.

602.101 OMB control numbers

(a) Purpose. This part collects and displays the control numbers assigned to collections of information in Internal Revenue Service regulations by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The Internal Revenue Service intends that this part [together with 26 C.F.R. 601.9000] comply with the requirements of 1320.7(f), 1320.12, 1320.13 and 1320.14 of 5 CFR Part 1320 (OMB regulations implementing the Paperwork Reduction Act), for the display of control numbers assigned by OMB to collections of information in Internal Revenue Service regulations. This part does not display control numbers assigned by the Office of Management and Budget to collect-ions of information by the Bureau of Alcohol, Tobacco, and Firearms

(b) Cross-reference. For display of control numbers assigned by the Office of Management and Budget to Internal Revenue Service collection of information in the Statement of Procedural Rules (26 CFR Part 601), see 26 CFR 601.9000.

(c) Display

26 CFR part of section where identified and described	Current OMB control number
§ 1.1-1	1545-0067

(Rest of OMB Table omitted herein)

26 U.S.C. SECTION 7442

"The Tax Court and its divisions shall have such jurisdiction as is conferred on them by this title, by chapters 1, 2, 3 and 4 of the Internal Revenue Code of 1939, by title II and title III of the Revenue Act of 1926 (44 Stat. 10-87), or by laws enacted subsequent to February 26, 1926."

RULE 13, RULES OF PRACTICE, U.S. TAX COURT
JURISDICTION

"(a) Notice of Deficiency or of Transferee or Fiduciary Liability Required. . .(Reprinted in its entirety in the appendix, p.H, *infra*).

RULE 190, RULES OF PRACTICE, U.S. TAX COURT
How Appeal Taken

"(a) General: Review of a decision of the Court by a United States Court of Appeals is obtained by filing a notice of appeal and the required filing fee with the Clerk of the Tax Court within 90 days after the decision is entered. If a timely notice of appeal is filed by one party, then any other party may take an appeal by filing a notice of appeal within 120 days after the Court's decision is entered. Code Section 7483. For other requirements governing such an appeal, see Rules 13 and 14 of the Federal Rules of Appellate Procedure."

RULES OF FEDERAL APPELLATE PROCEDURE
Rule 13. Review of Decisions of the Tax Court

"(a) How Obtained: Time for Filing Notice of Appeal. Review of a decision of the United States Tax Court shall be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after the decision of the Tax Court is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the decision of the Tax Court is entered.

"The running of the time for appeal is terminated as to all parties by a timely motion to vacate or revise a decision made pursuant to the Rules of Practice of the Tax Court. The full time for appeal commences to run and is to be computed from the entry of an order disposing of such motion, or from entry of decision, whichever is later."

RULE 162. RULES OF PRACTICE, U.S. TAX COURT
Motion to Vacate or Revise Decision

"Any motion to vacate or revise a decision, with or without a new or further trial, shall be filed within 30 days after the decision has been entered, unless the Court shall otherwise permit."

STATEMENT OF THE CASE

Okon filed a timely petition in Tax Court challenging income taxes and penalties set forth in Notices of Deficiency covering 1985 and 1986. (*Infra*, p.B-4).

Only weeks prior to a hearing in Tax Court on the respondent's motion to dismiss Okon's petition, Okon received computer printouts of her Individual Master File transcripts from the Internal Revenue Service pursuant to her request for these records under the Freedom of Information Act (*Infra*, p.E 12-16, 25).

Individual Master File [IMF] transcripts are IRS computer generated records setting forth an individual's liability, payment history, and filing requirement, if any.[1]

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1 The Internal Revenue Manual, 30(55)2-Concept of the Individual Master File (IMF) states: (1) The Individual Master File is a magnetic tape record of all individual income tax filers, in Social Security Number sequence, and is maintained at the Martinsburg Computing Center. All tax data and related information pertaining to individual income taxpayers are posted to the Individual Master File so that it reflects a continuously up-dated and current record of each taxpayer's account. All settlements with taxpayers are effected through computer processing of the Individual Master File account and the data therein is used for accounting records, for issuance of refund checks, bills or notices, answering inquiries, classifying returns for audit, preparing reports and other matters concerned with the processing and enforcement activities of the Internal Revenue Service.

The courts have normally accorded such transcripts great weight when introduced by the Commissioner to prove a taxpayer's liability.[2]

Okon's IMF transcripts showed a determination made by agents and employees of the Commissioner several months after the notices of deficiency had been issued to Okon that: a) the Notices of Deficiency covering 1985 and 1986 had been processed in error; b) that Okon owed no income taxes for the years at issue; and c) that Okon had no requirement to file Forms 1040 for the years at issue. (*Infra*, p.E12-16).

At the hearing (*Infra*, p.E-30) and on brief, Okon supported the correctness of the determination shown on the IMF transcripts by demonstrating that the "taxable income" referenced in § 1, Title 26 (Tax Imposed) is a tax on foreign earned income only, as evidenced by 26 Code of Federal Regulations § 602.101, an Office of Management and Budget Table of Control Numbers showing that the only IRS form to be used in compliance with 26 CFR 1.1-1 (interpreting the tax imposed at 26 U.S.C. 1) bears a control number 1545-0067. The only IRS Form bearing this OMB control number is Form 2555, captioned "Foreign Earned Income." Unless the State of New Mexico is considered

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2 *U.S. v. Hayes*, 861 F.2d 1225 (10th Cir. 1988) (IRS computer record keeping system is reliable and trustworthy); *Duane v. Coplin*, 12/17/91, CA-6 (unpublished) (IRS computer codes have uniform meaning and computerized master tax accounts are no more untrustworthy than any other part of IRS' assessment system.

a "foreign country," Okon had no "foreign earned income" during the years at issue, nor was she a fiduciary for a non-resident alien.

On brief in Tax Court, and in the Court of Appeals, Okon pointed out that the notices of deficiency, although identifying specific penalty and interest statutes, failed to identify the statute which allegedly imposed the underlying tax which Okon supposedly owed. Okon inquired of the respondent as well as the Tax Court which statute imposed the tax at issue, but was not provided with an answer by either. Throughout the proceedings below, Okon was therefore left to assume that the respondent was imposing taxes under 26 U.S.C. § 1 (Tax on Individuals).

As noted by petitioner in both courts below, the respondent had triggered the false liability shown on the notices of deficiency by filing bogus 1040 returns (dummy returns) on behalf of Okon which returns contained no figures from which a liability could be determined. (*Infra*, p.E-8). While 26 U.S.C. § 6020(b) gives the Secretary authority to file returns on behalf of taxpayers who have liabilities for filing and haven't done so, the IRS' handbook of delegation orders showed that Austin, which created the bogus returns, only had authority to create substitute returns for Forms 941, 942, 943 and 1065.[3]

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3 The Delegation Order AUCC-6 for the Austin Collection Center, issued 10-1-1986, restricts Austin's delegation of authority for creating substitute returns to Forms 941, 942, 943 and 1065.

At the Tax Court hearing (*Infra*, p.E 12-16, 25), and on brief, Okon argued that the Court lacked subject matter jurisdiction to proceed based on the determinations shown in the IMF transcripts that the Notices of Deficiency (upon which the Court's jurisdiction was dependent) had been processed in error and that Okon owed no taxes.

The Court refused to relinquish its jurisdiction (*Infra*, p.E-25), and also refused to allow the introduction of the IMF transcripts into the record, stating they would merely clutter up the Court's file. (*Infra*, p.E-32) However, the Court granted permission for Okon to attach the IMF transcripts to her Memorandum of Law filed with the Tax Court in April 1992 (*Infra*, p.E-32), which she did. Okon also attached relevant portions of the IRS' 6209 Document (also obtained under the Freedom of Information Act, explaining the codes used on the IMFs), to her Memorandum of Law.

In its Memorandum Opinion entered on January 21, 1993, the Tax Court stated that "Petitioner has obtained copies of the administrative file maintained by respondent with respect to her tax liability. She contends that the codes that have been placed on her records indicate that she was not required to file income tax returns for 1985 and 1986, **that respondent has erroneously ignored those codes, and, therefore, respondent has not made a valid determination of deficiencies.**" (Emphasis added) (*Infra*, p.B-7). The Court's statement misconstrues Okon's position and places the cart before the horse.

Rather, throughout the proceedings in Tax Court, petitioner, using relevant portions of the IRS' own 6209 Document, demonstrated that the IMF transcript showed determinations by

the IRS that the notices of deficiency had been processed in error, that no taxes were owed, and that petitioner was not required to file Forms 1040 for the years at issue. The determinations shown on the IMF transcripts, coupled with the demonstration that the taxes imposed at 26 U.S.C. § 1 are imposed upon foreign earned income, should have been more than adequate to remove the presumption of accuracy ordinarily accorded to notices of deficiency.

Without requesting evidence concerning the creation of the IMF transcripts by agents and employees of the respondent, without seeking proof concerning the codes thereon, and without respondent's having made any offers of proof that the IMFs were bogus or contained errors, or that the relevant pages of the 6209 Document were in error, the Court stated in its Memorandum Opinion, "Notwithstanding any alleged error which may appear in the use of respondent's internal codes..." (*Infra*, p.B-7). Thus the Tax Court dismissed the IMF transcripts without affording petitioner an evidentiary hearing or requesting any offers of proof from either party.

On January 21, 1993, the Tax Court entered its Memorandum Opinion, which, while specifically granting the respondent's motion to dismiss and for sanctions under 26 U.S.C. 6673 (*Infra*, p.B-11), did not likewise specifically grant respondent's request to find that there was due and owing certain sums set out by the respondent. (*Infra*, p.B 1-11).

On January 27, 1993 the Tax Court entered its Order and Decision, which mentioned, but did not incorporate the

Memorandum Opinion as part of the Order, and which additionally made no mention of taxes owed or filing requirements, but dismissed Okon's petition and fined Okon $1,500 under 26 U.S.C. 6673. (*Infra*, p.C).

Okon filed a motion to vacate this Order and Decision, asserting lack of subject matter jurisdiction based on the determination shown in the IMF transcripts that the Notices of Deficiency were processed in error and pointing out that the order was fatally defective in its failure to mention taxes owed or filing requirements.

On April 23, 1993, without either mentioning or specifically denying Okon's Motion to Vacate, the Tax Court vacated its January 27, 1993 Order and Decision and entered a revised Order and Decision. (*Infra*, p.D-1).

Continuing to assert the Court's lack of subject matter jurisdiction, Okon filed a second motion to vacate the (revised) Order and Decision within the thirty days permitted by Rule 162 of the Tax Court's Rules. This motion (styled Renewed Motion to Vacate by petitioner) was denied on May 28, 1993. (*Infra*, p.A-2).

Within ninety days of May 28, 1993 (*Infra*, p.A-2), as permitted by Rule 13 of the Rules of Appellate Procedure, Okon filed her notice of appeal.

The appeal was premised upon the Tax Court's having wrongfully retained jurisdiction, notwithstanding Okon's IRS generated IMF transcripts. In her appeal, Okon also again pointed out that the OMB Tables referenced at 26 CFR 602.101,

and other federal publications, indicate that the tax imposed upon the "taxable income" of "individuals" at § 1 of Title 26 pertains to foreign earned income only because the only form shown to apply to 26 C.F.R. 1.1-1 (which in turn explains 26 U.S.C. § 1) is form 2555, captioned "Foreign Earned Income." Okon had no "foreign earned income" during the years at issue, nor was she a fiduciary for a non-resident alien individual during those years. Okon also again stated that she had no income earned through the manufacture or sale of alcohol, tobacco, firearms, narcotics or from ownership of gambling establishments during the years at issue.

The Court of Appeals for the Tenth Circuit dismissed Okon's petition, stating that the petition was not timely and asserting that Okon's time to appeal ran 90 days from the entry of the (revised) Order and Decision entered on April 23, 1993 and that the time to appeal was not tolled by Okon's motion to vacate the (revised) order. (*Infra*, p.A 1-4).

REASONS FOR GRANTING THE WRIT

I. THE TAX COURT'S FAILURE TO RELINQUISH JURISDICTION, AFTER EVIDENCE THAT THE NOTICES OF DEFICIENCY WERE PROCESSED IN ERROR, SO FAR DEPARTS FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR EXERCISE OF THIS COURT'S POWER OF SUPERVISION

The Tax Court is a court of limited jurisdiction, 26 U.S.C., Section 7442. *Freytag v. C.I.R.*, 111 S.Ct. 2631 (1991); *Alford v. C.I.R.*, 800 F.2d 987, 988 (10th Cir.1986); *Wenzel v. C.I.R.*, 707 F.2d 694 (2nd Cir.1983); *Continental Equities, Inc. v. C.I.R.*, 551 F.2d 74 (C.A. Fla. 1977).

A determination of a deficiency, along with the issuance of a **valid** notice of deficiency, are absolute preconditions to Tax Court jurisdiction. *Alford, supra; Abrams v. C.I.R.*, 787 F.2d 939, 941 (4th Cir. 1986); *Scar v. C.I.R.*, 814 F.2d 1363 (9th Cir. 1987). Where there is no deficiency to redetermine, the Tax Court lacks jurisdiction to proceed. *McConkey v. C.I.R.*, 199 F.2d 892 (4th Cir. 1952), cert. denied 345 U.S. 924.

It is essential to the proper rendition of a judgment that the court have jurisdiction of the subject matter. *Giordenello v. U.S.*, 357 U.S. 480 (1958). A judgment rendered without jurisdiction of the subject matter is void. *Capron v. Van Norden*, 6 U.S. (2 Cranch) 126 (1804). *Re Bonner, 151 U.S. 242 (1894). 46 AmJur 2nd*, Judgments, 24 (1976). The action of a court is void if it finds an essential jurisdictional fact without any proof. *New Lamp Chimney Co. v. Ansonia Brass & Copper Co.*, 91 U.S. 656.

Subject matter jurisdiction can be raised at any time, even on appeal. *Louiseville and Nashville Railway Co. v. Mottley*, 211 U.S. 149 (1908). *Massachusetts v. Mellon, (Frothingham v. Mellon)*, 262 U.S. 447 (1923). An issue of subject matter jurisdiction can by raised by the court on its own motion. Robert

Cased *Jurisdiction in Civil Actions*, 2nd Ed. § 1.01[1].

The power to challenge subject matter jurisdiction is not lost by reason of consent, waiver, or even estoppel. *Knee v. Chemical Leaman Tank Lines, Inc.*, 293 F.Supp. 1094 (E.D. Pa. 1968). A challenge to subject matter jurisdiction can be raised by the party who initiated the suit in that court. Capron, supra.

II. THE COURT OF APPEALS ERRED IN FINDING THAT THE APPEAL WAS UNTIMELY

A timely motion to vacate suspends the tolling of the appeal period until the motion has been effectively disposed of. *Memphis v. Brown*, 94 U.S. 715 (1876). *Trohimovich v. C.I.R.*, 776 F.2d 873 (9th Cir. 1985). As noted by the Court of Appeals, Okon timely filed a motion to vacate following the entry of the Tax Court's April 23, 1993 Order and Decision, (*Infra*, p.A-2) which was a revised, final, and therefore the only properly appealable order.

The Court of Appeals incorrectly determined that the Tax Court had "denied" Okon's initial Motion to Vacate, since this motion did in fact result in the initial January 27, 1993 Order and Decision being vacated and set aside on April 23, 1993.

Conversely, if the Court of Appeals had correctly determined that the initial Motion to Vacate was "denied," since the Tax Court did in fact subsequently vacate its January 27, 1993 Order and Decision, the initial Motion to Vacate would have

become a nullity since it would have been directed at a non-final order. Therefore a subsequent second motion directed towards a final, appealable order, should have been legally sufficient to toll the time for filing the appeal.

The cases cited by the Court of Appeals, *Venable v. Haislip*, 721 F.2d 297, 299 (10th Cir. 1983), *Wagoner v. Wagoner*, 938 F.2d 1120, 1121 (10th Cir. 1991), *Trohimovich v. C.I.R.*, 776 F.2d 873, 875 9th Cir. 1985), *Gooch v. Skelly Oil Co.*, 493 F.2d 366, 368 (10th Cir.), *cert. denied*, 419 U.S. 997 (1974), and *Mullen v. Household Bank-Fed. Sav. Bank*, 867 F.2d 586, 587 n.1 (10th Cir. 1989), in support of dismissing Okon's petition as being untimely (*Infra*, A-2 to 3), did not involve a situation where a motion to vacate actually resulted in a vacated order before a second motion to vacate, directed at a revised or substituted order, was submitted.

Although the Court of Appeals refers to the revision of the order as being essentially "ministerial," (*Infra*, A-4, n.1), the revision was material and substantial. The January 27, 1993 Order, just like the January 21, 1993 Memorandum Opinion, failed to specifically grant the respondent's request to find that the petitioner owed certain taxes, and was therefore fatally defective since the tax liability formed the gravamen of the case.

Because Okon's motion to vacate resulted in a revised order, Okon's time to appeal should have commenced anew with the entry of the revised order and her subsequent motion to vacate this revised order should have tolled the time for filing the appeal until 90 days following its denial by the Tax Court.

III. THIS CASE INVOLVES IMPORTANT QUESTIONS OF LAW SINCE THE FEDERAL CIRCUIT COURTS ARE IN A STATE OF CONFUSION RESPECTING THE NATURE OF THE INCOME TAX

More important than questions of the Tax Court's subject matter jurisdiction, or the Court of Appeals' dismissal, the heart of this case raises questions, the determination of which is essential to continued collection of federal income taxes from the American public; *i.e.*, what statute imposes the federal income tax on the common law (non alcohol, tobacco, firearms, narcotics or wagering related) domestic earnings of Citizens of the United States residing within the several States and on the earnings of resident aliens living within the States? And is the income tax imposed by that as yet unidentified statute a direct or an indirect tax?

As noted in petitioner's Memorandum of Law in the Tax Court, and again in her Brief-in-Chief in the Court of Appeals, the federal district courts are presently in great disarray respecting the very nature of the tax sought to be collected from Okon.

While the respondent refused to identify the statute which allegedly imposes the income tax, either on the notices of deficiency themselves or in his/her motion to dismiss, the federal district courts have been unable to agree on whether the federal income tax is a direct or an indirect tax. The distinction is critical since indirect, or excise, taxes are imposed with respect to certain activities or privileges. *See, Congressional Record*, March 27, 1943, page 2580.

The Second Circuit in *Ficarola v. C.I.R.*, 751 F.2d 85, 87 (1984), proclaimed the federal income tax to be an indirect tax. The Fifth, Seventh, Eighth, Ninth and Tenth Circuits hold it to be a direct tax. *See, Parker v. C.I.R.*, 724 F.2d 469, 471 (5th Cir. 1984); *U.S. v. Sloan*, 939 F.2d 499, 501 (7th Cir. 1991); *U.S. v. Francisco*, 614 F.2d 617 (8th Cir. 1980); *U.S. v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990). On the other hand, the First Circuit maintains the tax is neither direct nor indirect and that the need for distinction has been eliminated by the 16th Amendment. *U.S. v. Turano*, 802 F.2d 10, 12 1986.

The distinction between direct and indirect taxes was of monumental concern to our founding fathers, and the courts acknowledged the existence of these two major classes of federal taxation at least up through *Brushaber v. Union Pacific R.R. Co.*, 240 U.S. 1 (1916).

In *Brushaber*, this Court reaffirmed that direct taxes still had to be apportioned and that since the tax imposed by the 16th Amendment was not required to be apportioned among the several States, the income tax was clearly an indirect, or excise tax. However, what *the Brushaber Court* failed to mention within the four corners of its published opinion was that the case concerned itself with tax on non-resident alien income. *See, Treasury Decision* 2313, March 21, 1916.

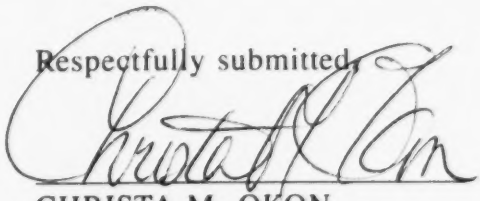
A look at the statutes and regulations themselves is not helpful. While 26 U.S.C. § 1 appears to impose a tax on the earnings of individuals simply based on tables showing amounts of "income," 26 C.F.R. 1.1-1, which is supposed to explain 26 U.S.C. 1, furthers the illusion that income is somehow defined by how much rather than what constitutes "income" and its relation to from whence it is derived. Therefore, it comes as quite a shock that the OMB Tables at 26 C.F.R. 602-101, supra, reveal that the only IRS form to be used in compliance with 26 C.F.R. 1.1-1, and therefore with 26 U.S.C. § 1, is form 2555, Foreign Earned Income, bearing the OMB number 1545-0067.

Liability for taxation must clearly appear. *Higley v. C.I.R.*, 69 F.2d 160, 162 (8th Cir. 1934). Where, as in the case at bar, the respondent consistently avoided identifying the statute which imposes the underlying tax, and upon which subsequent filing requirements depend, liability has not been established at all, let alone clearly. Finally, because the IRS generated IMF transcripts thereafter show a determination that the notices of deficiency were processed in error, the Tax Court's Order and Decision should be vacated.

CONCLUSION

For the foregoing reasons, Okon respectfully asks that this Court exercise its power of supervision over the Tax Court by vacating the Memorandum Opinion, together with the Order and Decision of the Tax Court, or by remanding the case to the Tenth Circuit Court of Appeals for a full and complete review of the Tax Court's actions.

Respectfully submitted,



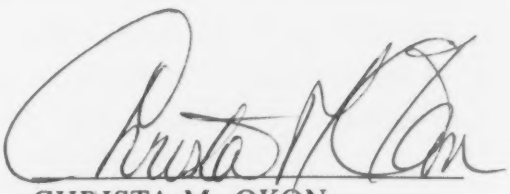
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October 12, 1994

CERTIFICATE OF SERVICE

I, Christa M. Okon, hereby certify that I am the petitioner in the foregoing Petition for Writ of Certiorari, and that on October 14, 1994, pursuant to Rule 28.5(b) of the Rules of the Supreme Court of the United States, I caused three copies of the foregoing Petition for Writ of Certiorari to be mailed, first-class postage prepaid, by depositing the documents in the United States post office, addressed to the following: Scott Towers, Esq., (counsel for Respondent), Internal Revenue Service, Dept. of Justice, Tax Division, Appellate Section, 10th & Pennsylvania Avenue., N.W., Washington, D.C. 20530, and one copy to the Solicitor General, Department of Justice, Washington, D.C. 20530.

Dated October 14, 1994



CHRISTA M. OKON
Petitioner

APPENDIX A
OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT— JUNE 16, 1994
REPORTED AT 26 F.3d 1025 (10th Cir. 1994)

Christa M. Okon,
Petitioner,

v.

Commissioner of Internal Revenue,
Respondent.

No. 93-9024

ON APPEAL FROM THE U.S. TAX COURT
(T.C. No. 18247-91)

BELOT, District Judge

This is an appeal from a decision of the United States Tax Court affirming income tax deficiencies with attendant penalties and fines assessed by the Commissioner, and imposing an additional penalty under 26 U.S.C. § 6673 for the pursuit of frivolous or groundless litigation. For the reasons stated below, we dismiss the appeal for lack of jurisdiction, see generally Wagoner v. Wagoner, 938 F.2d 1120 (10th Cir. 1991) (appellate court has duty to inquire into its own jurisdiction, even though neither party contests it, and has no choice but to dismiss appeal where jurisdiction is lacking), and deny the Commissioner's request for appellate sanctions.

Petitioner commenced this action to dispute income tax deficiencies and penalties assessed for the years 1985 and 1986, when petitioner admittedly earned income but did not file tax returns. On January 21, 1993, the Tax Court issued a memorandum opinion in which it granted the Commissioner's motion to dismiss the petition for failure to state a claim and imposed a $1,500 penalty under § 6673. These rulings were formalized in an order and decision entered January 27, 1993. Petitioner had ninety days to perfect an appeal from that decision. See, 26 U.S.C. § 7483; Tax Ct. R. 190(a); Fed.R.App.P. 13(a).

Shortly thereafter, however, petitioner moved to vacate the decision under Tax Ct.R. 162. In accordance with Fed.R.App.P. 13(a), this tolled the appeal period until April 23, 1993, when the motion was denied by the Tax Court. (The court also amended its decision on that date to include specific references to the tax deficiencies and additions previously determined and set out in its memorandum opinion.) Petitioner then had until July 21, 1993, to commence an appeal. Instead, she filed a "Renewed Motion to Vacate the Tax Court's Order and Decision," in which she "once more ask[ed] th[e] Court to vacate its Memorandum Opinion and its [amended] Order and Decision." R. Vol. I, doc. 19 at 2. This second motion to vacate was denied on May 28, 1993.

Petitioner finally filed her notice of appeal on August 24, 1993, within ninety days of the denial of her second motion to vacate, but well beyond that same critical period as measured

from the denial of her first motion. Thus, unless the second motion tolled again the time for appeal, petitioner's notice was untimely and, consequently, failed to establish this court's jurisdiction. See, Gooch v. Skelly Oil Co., 493 F.2d 366, 368 (10th Cir.), cert. denied, 419 U.S. 997 (1974) ("A court of appeals acquires jurisdiction of an appeal only upon the filing of a timely notice of appeal and this requirement is mandatory and jurisdictional.")

This court has noted on several occasions the general principle that tolling motions may not be tacked together to perpetuate the prescribed time for appeal. See, e.g., Mullen v. Household Bank-Fed. Sav. Bank, 867 F.2d 586, 587 n.1 (10th Cir. 1989); Venable v. Haislip, 721 F.2d 297, 299 (10th Cir. 1983); see, also Wagoner, 938 F.2d at 1123 n.3. This general principle is fully appropriate to the present tax context, see, Tax Cr.R. 162 (making no provision for successive motions to vacate); Fed.R.App.P. 13(a) (making no provision for repeated tolling of appeal period); see, e.g., Trohimovich v. Commissioner, 776 F.2d 873, 875 (9th Cir. 1985) (rejecting possible tolling effect of "successive motions for post-trial relief [under Rules 161, 162] in the Tax Court"), and we now expressly acknowledge

its application here.[1] Accordingly, we must, therefore, dismiss the appeal.

The jurisdictional disposition of this appeal impacts, though does not obviate, our assessment of the Commissioner's motion for appellate sanctions. As the Ninth Circuit observed in Trohimovich, "that we have no jurisdiction to consider the merits of this appeal does not preclude us from imposing sanctions . . ., [but] in the absence of such jurisdiction we do not decide whether [the appellant's] arguments are frivolous or well taken." Trohimovich, 776 F.2d at 875; see also, Wojan v. General Motors Corp., 851 F.2d 969, 973 (7th Cir. 1988).

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1 The Ninth Circuit appeared to limit its holding in Trohimovich regarding the non-tolling effect of successive post-trial motions by adding the qualifying phrase, "when they assert the same grounds." Trohimovich, 776 F.2d at 875. Our cases, however, do not suggest any such exception for litigants who parcel out objections over successive post-trial motions. While the case for an exception may be stronger when new grounds for objection only belatedly become available to the post-trial movant, we need not decide the question today. The only truly new matter addressed in petitioner's "renewed" motion to vacate involved the sua sponte amendment of the Tax Court's decision to include the figures from its memorandum opinion, and petitioner has not challenged that essentially ministerial action on appeal.

Rather, we look to the obviousness of the jurisdictional deficiency undermining petitioner's appeal, in connection with the more general question "whether the conduct of th[is] litigant[] is abusive," as shown by, for example, a "history of repetitive and meritless claims." Trohimovich, 776 F.2d at 875-876, or the pursuit of numerous facially inappropriate motions in this proceeding. In our view, the Commissioner—who also overlooked the jurisdictional deficiency underlying our disposition—has not justified, and, based on the record, could not justify, the imposition of appellate sanctions in this respect.

The appeal is DISMISSED and the Commissioner's request for sanctions is DENIED. The mandate shall issue forthwith.

APPENDIX B

T.C. Memo. 1993-24

UNITED STATES TAX COURT

Christa M. Okon,
Petitioner,

v.

Commissioner of Internal Revenue,
Respondent.

Docket No. 18247-91. Filed January 21, 1993

Christa M. Okon, pro se.

Thomas Eagan, for respondent

MEMORANDUM OPINION

SHIELDS, Judge: This case is before us at this time on respondent's motion to dismiss for failure to state a claim and for damages under section 6673. Respondent determined deficiencies in and additions to petitioner's Federal income taxes for 1985 and 1986 as follows:

		Additions to Tax	
Year	Deficiency	Sec.6651(a)(1)	Sec.6653(a)(1)
1985	$739	$184.75	$36.95
1986	2,283	$570.75	—

Year	Sec. 6653 (a)(2)	Sec. 6653(a)(1)(A)	Sec. 6653(a)(1)(B)
1985	*	—	
1986	—	$114.15	[2]

	Sec. 6654
1985	—
1986	$110

* 50 percent of interest due on $739, the underpayment of tax for the taxable year 1985 attributable to negligence.

[2] 50 of the interest due on $2,283, the underpayment of tax for the taxable year 1986 attributable to negligence.

All section references are to the Internal Revenue Code as amended. All Rule references are to the Tax Court Rules of Practice and Procedure.

The issues to be decided are: (1) Whether we have jurisdiction over the subject matter of this case; (2) if so, whether the petition should be dismissed for failing to state a claim upon which relief can be granted; and (3) whether damages should be awarded under section 6673.

Petitioner, an independent paralegal, and a resident of Santa Fe, New Mexico, at the time she filed the petition in this case, is obviously intelligent and reasonably well educated. Upon learning that petitioner had apparently failed to file Federal income tax returns for 1985 and 1986, respondent's service center mailed to her at 105 E. Marcy, Santa Fe, New Mexico 87501 the usual form letters requesting return information. In a letter to respondent's service center dated March 18, 1991, petitioner acknowledged receipt of the form letters and advised that her then-current home address was 1490 S. St. Francis Drive, Santa Fe, N.M. 87501. In the same letter petitioner advised respondent that she "would appreciate your directing all future mail to

me at * * * Post Office Box 1381, Santa Fe, New Mexico 87504-1381." In addition, petitioner stated:

> In order to determine whether you are authorized to receive such return information I would appreciate your furnishing me with your full name, employee or IDRS number, group and branch number, and the name of the commissioner for whom you work. In addition, please send me a photocopy of your commission and delegated authority and a copy of the document which says I did not file.
>
> In closing, I wish to point out to you that I am a citizen of the United States, that I was at no time during 1985 or 1986, or indeed ever, a citizen living abroad, nor have I earned income from sources outside the United States, nor do I earn income through the importation of articles into this country and further, I have never earned a dime through the manufacture or sale of alcohol, tobacco, firearms or narcotics.

In separate notices mailed to petitioner on May 13, 1991, respondent determined deficiencies in and additions to tax due from petitioner for the taxable years 1985 and 1986. In the notices, respondent calculated petitioner's income for each year from Forms W-2 filed with the respondent. Each deficiency notice was mailed by respondent to petitioner at 105 E. Marcy, Santa Fe, N.M. 87501 and not to Post Office Box 1381, Santa Fe, N.M. 87504-1381, as requested by petitioner in her letter of

March 18, 1981, or to her home address as shown in the same letter.

On August 8, 1991, petitioner mailed a letter to this Court. In the letter, which was received by the clerk's office on August 12, 1991, petitioner requested an extension of 60 days in the time within which she could file a petition from respondent's notices of deficiency. By order dated August 15, 1991, the Chief Judge directed the clerk to file petitioner's letter as a petition even though it did not comply with our Rules regarding form, content, or the payment of filing fees. The order also provided that if petitioner failed to file on or before October 15, 1991, a proper amended petition and pay the filing fee, her petition would be dismissed. On or before October 15, 1991, petitioner filed an amended petition and on December 16, 1991, respondent filed a motion to dismiss the amended petition for failure to state a claim, which was heard in Albuquerque, New Mexico, on March 16, 1992.

Subsequent to the filing of respondent's motion to dismiss, the Court received the following from petitioner: (1) A motion to strike respondent's motion to dismiss (this motion was filed by the Court on January 16, 1992, as an objection to respondent's motion to dismiss); (2) a second amended petition which was filed on October 18, 1991; and (3) a third amended petition which was received by the clerk on March 4, 1992, and noted as lodged. Petitioner also appeared at the hearing on March 16, 1992, and opposed respondent's motion to dismiss.

From a review of the above, it is apparent from the outset that petitioner has failed to comply with our Rules. Instead she persists in advancing very contrived arguments to the effect that respondent's deficiency notices are invalid because (1) the provisions of the Internal Revenue Code do not apply to her since during 1985 and 1986 she was not a citizen of the United States who was living abroad; and (2) Fred T. Goldberg, the Commissioner of Internal Revenue and the person in whose name the deficiency notices were issued, had no authority to determine deficiencies in or additions to her income tax for such years.

Petitioner argues that respondent's motion to dismiss should be denied because it was untimely under Rule 36(a) and, contrary to Rule 54, it improperly seeks two forms of relief, i.e., dismissal of her petition and an award of damages under section 6673. Finally, petitioner contends that we do not have jurisdiction because the deficiency notices were invalid as a result of being mailed to the wrong address.

The exact factual or legal basis for petitioner's arguments, if any exists, does not appear from the record primarily because of her failure to comply with Rule 34(b), which in pertinent part requires the clear and concise assignment by petitioner of "each and every error which * * * petitioner alleges to have been committed by the Commissioner in the determination of the deficiency" as well as "clear and concise lettered statements of the facts on which petitioner bases the assignments of error".

Nevertheless, we will discuss each of petitioner's contentions beginning with her argument that respondent's motion should be denied because it was untimely under Rule 36(a), which provides that respondent has 45 days from the date that a petition or an amended petition has been served to make a motion with respect to such pleading. Generally speaking under the Rules, the day on which an act or event occurs from which a designated period of time begins to run will not be counted. Rule 25(a). Since petitioner's first amended petition was served on respondent on November 1, 1991, the 45-day period which respondent had under Rule 36(a) for filing a motion with respect to the first amended petition began on November 2, 1991, and expired on December 17, 1991. It is apparent, therefore, that respondent's motion, filed on December 16, 1991 was timely.

Rule 54 provides that motions shall be separately stated and not joined together. However, the Rule does not apply to requests for relief that are integrally related such as respondent's motion for damages under section 6673, which is contingent upon our allowance of respondent's motion under Rule 40 to dismiss the petition for failing to state a claim. Consequently, respondent's motion to dismiss and to assess damages under section 6673 does not constitute a violation of Rule 54.

Petitioner next asserts that we lack jurisdiction over her case because respondent failed to determine deficiencies and because respondent failed to mail notices of deficiency to the

address for her which was last known to the respondent. It is well settled that either party, or the Court sua sponte, can question jurisdiction at any time. Normac, Inc. v. Commissioner, 90 T.C. 142, 146 (1988); Kahle v. Commissioner, 88 T.C. 1063 n.3 (1987); Brown v. Commissioner, 78 T.C. 215, 218 (1982). It is also settled that when raised the question of jurisdiction must be resolved and that we have jurisdiction to make the determination. Normac, Inc. v. Commissioner, supra; Wheeler's Peachtree Pharmacy, Inc. v. Commissioner, 35 T.C. 177, 179 (1960).

For this Court to have jurisdiction, respondent must determine a deficiency in a taxpayer's tax liability and issue a valid notice of the deficiency to the taxpayer. Furthermore, the taxpayer must file a timely petition with this Court. Secs. 6212(a) and 6213(a); Pearce v. Commissioner, 95 T.C. 250 (1990); McKay v. Commissioner, 89 T.C. 1063, 1067 (1987), affd. 886 F.2d 1237 (9th Cir. 1989).

Petitioner has obtained copies of the administrative file maintained by respondent with respect to her tax liability. She contends that the codes that have been placed on her records indicate that she was not required to file income tax returns for 1985 and 1986, that respondent has erroneously ignored those codes, and, therefore, respondent has not made a valid determination of deficiencies. Notwithstanding any alleged error which may appear in the use of respondent's internal codes, there are several undisputed facts in this case. First, for each of the years 1985 and 1986 petitioner was employed and received compensa-

tion for her services. Second, Forms W-2 were filed with respondent showing the amount of compensation petitioner received during those years. Third, petitioner did not file an income tax return for 1985 and 1986 with respondent. Finally, respondent mailed the notices of deficiency to petitioner at 105 E. Marcy, Santa Fe, New Mexico. It is also undisputed that petitioner received both notices of deficiency in sufficient time to timely file documents with this Court which were treated at a petition.

If respondent determines that there is a deficiency in a taxpayer's income tax, respondent is authorized to send a notice of deficiency to the taxpayer by registered or certified mail. Sec. 6212(a). A presumption exists that a deficiency set forth in a notice of deficiency was determined unless the notice of deficiency reveals on its face that respondent failed to make a determination. Pearce v. Commissioner, supra, at 256; see also Clapp v. Commissioner, 875 F.2d 1396, 1402 (0th Cir. 1989), affg. an Order of this Court; Scar v. Commissioner, 814 F.2d 1363, 1367 (9th Cir. 1987), revg. 81 T.C. 855 (1983).

Petitioner has made no attempt to overcome the above presumptions. Furthermore, in the present case, each of respondent's deficiency notices clearly indicates that respondent obtained the amount of income earned by petitioner in each year by reference to "records and information available" to respondent, i.e., the copies of Forms W-2 that had been previously

filed with respondent. With the income obtained from the Forms W-2, respondent proceeded to compute petitioner's tax liability for each year and, since petitioner had not filed a return, the tax liability determined by respondent for each year was her deficiency in tax for that year. Respondent also determined the additions to tax as set out in each notice of deficiency. In view of the foregoing, it is apparent that respondent determined deficiencies as set out in the notices of deficiency and petitioner's contention to the contrary has no merit.

Petitioner also challenges our jurisdiction because the deficiency notices were not mailed by respondent to her at Post Office Box 1381, Santa Fe, New Mexico, as requested in her letter of March 18, 1991, or to her at 1490 St. Francis Drive, Santa Fe, New Mexico, her new home address which she also included in the same letter. As set forth above respondent mailed the notices to her former address, 105 E. Marcy, Santa Fe, New Mexico.

Section 6212(b)(1) provides that a notice of deficiency "shall be sufficient" if mailed to the taxpayer at the last address known to respondent. This provision merely creates a safe harbor address where respondent can safely send a deficiency notice. McKay v. Commissioner, 89 T.C. 1063, 1068 (1987); Mulvania v. Commissioner, 81 T.C. 65, 67-68 (1983). However, where, as here, the last address known to respondent is not used, such failure does not invalidate actual notice of deficiency if the taxpayer receives actual notice of the determination of the deficiency in sufficient time to file a timely petition. Clodfelter

v. Commissioner, 527 F.2d 754, 757 (9th Cir. 1975), affg. 57 T.C. 102 (1971); Zaun v. Commissioner, 62 T.C. 278 91974).

On this record, we find that petitioner received actual notice of respondent's determination of the deficiencies without prejudicial delay. Her letter to the Court clearly reveals that she was aware of respondent's determinations. Moreover, the filing of that letter as a timely petition afforded her additional time in which to file an amended petition and negates any suggestion that she was deprived of an opportunity to petition this Court for a review of respondent's determinations. We conclude, therefore, that petitioner received what the statute requires, i.e., actual notice of respondent's determinations in sufficient time to permit her to file a timely petition. Therefore, we have jurisdiction.

We turn now to respondent's motion under Rule 40 to dismiss the petition for failure to state a claim. Rule 34(b) provides that a petition shall contain both clear and concise assignments of the errors that a petitioner alleges respondent to have made, and clear and concise lettered statements of the facts upon which the assignments of error are based. If a petition complies with these requirements, it will provide the Court with the legal and factual basis which the taxpayer contends is in support of her position.

The record in this case clearly establishes that the petition and amended petition do not comply with Rule 34. The petition as amended merely challenges the authority of respondent and

asserts that petitioner is not subject to Federal income tax. Petitioner denies neither the receipt of income during 1985 and 1986 in return for services nor her failure to file returns for such years. Instead, she has merely presented a series of tax protester arguments that this Court has rejected and will no longer discuss in detail. See Brock v. Commissioner, 92 T.C. 1127 (1989); Rowlee v. Commissioner, 80 T.C. 1111 (1983); McCoy v. Commissioner, 76 T.C. 1027 (1981), affd. 696 F.2d 1234 (9th Cir. 1983). We conclude, therefore, that petitioner has failed to state a claim upon which relief can be granted and respondent's motion to dismiss will be granted.

Under section 6673 we are authorized to impose against a petitioner a penalty not in excess of $25,000 if it appears that: (1) The proceedings were instituted or maintained primarily for delay; (2) the taxpayer's position is frivolous; or (3) the taxpayer unreasonably failed to pursue available administrative remedies. Under the circumstances outlined herein we believe that the imposition of a penalty under section 6673 is justified because petitioner, a reasonably well educated and intelligent paralegal, has persisted in advancing frivolous tax protester arguments which have been previously rejected by this Court. Accordingly, a penalty under section 6673 in the amount of $1,500 will be imposed.

An appropriate order and decision will be entered.

APPENDIX C
UNITED STATES TAX COURT
Washington, D.C. 20217

CHRISTA M. OKON,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 18247-91
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
	)	
Respondent.	)	

ORDER AND DECISION

On December 16, 1991, respondent filed a motion to dismiss for failure to state a claim and a motion for damages under section 6673 of the Internal Revenue Code. Petitioner submitted objections to that motion and a hearing was held on March 16, 1992. This Court issued its opinion on respondent's motion in Okon v. Commissioner, T.C. Memo. 1993-24. Therefore, it is

ORDERED AND DECIDED that respondent's motion to dismiss is granted. It is further

ORDERED AND DECIDED that petitioner is liable for a penalty under section 6673 in the amount $1,500.

PERRY SHIELDS
Judge

Entered: January 27, 1993

APPENDIX D
UNITED STATES TAX COURT
Washington, D.C. 20217

CHRISTA M. OKON,	)	Docket No. 18247-91
Petitioner,	)	
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent.	)	

ORDER AND DECISION

On January 27, 1993, the Court entered an Order and Decision in this case which granted respondent's motion filed December 16, 1991, and imposed a penalty under section 6673, Internal Revenue Code. However, it has come to the attention of the Court that the decision omitted specific references to the deficiencies and additions pertaining to the 1985 and 1986 taxable years which were redetermined by the Court in its opinion, Okon v. Commissioner, T.C. Memo. 1993-24.

The foregoing considered, and for cause appearing to the Court, it is

ORDERED that the Court's Order and Decision entered January 27, 1993, is vacated and set aside. It is further

ORDERED that respondent's motion to dismiss for failure to state a claim and for damages filed December 16, 1991, is granted. It is further

ORDERED and DECIDED that there are deficiencies in income tax and additions to tax due from petitioner for the taxable years 1985 and 1986 as follows:

Year	Deficiency	I.R.C. §6651(a)	I.R.C. §6653(a)(1)
1985	$ 739.00	$184.75	$36.95
1986	2,283.00	570.75	—
Total	$3,022.00	$755.50	$36.95

Year	I.R.C. § 6653(a)(2)	I.R.C. § 6653(a)(1)(A)	I.R.C. § 6653(a)(1)(B)	I.R.C. § 6654
1985	(1)	—	—	—
1986	—	$114.15	(2)	$110.00
Total		$114.15		$110.00

(1) 50 percent of the interest due on $739.00, the underpayment of tax for the taxable year 1985 attributable to negligence.

(2) 50 percent of the interest due on $2,283.00, the underpayment of tax for the taxable year 1986 attributable to negligence.

There is due from petitioner a penalty under section 6673 of $1,500.00 payable to the United States.

PERRY SHIELDS
Judge

Entered: April 23, 1993

APPENDIX E
EXCERPT FROM TAX COURT HEARING
MARCH 16, 1992

Docket No. 18247-91

E-8

a 590 transaction code with a closing code 88 means there has been a substitute for return. And that is all it means, is that the collection division could close out their case. They didn't have to obtain a delinquent return from the taxpayer, because the Service had followed the substitute for return procedures.

Actually, you know, it is a dummy return, in this case, rather than a full-fledged 6020(b) return, but it is the substitute procedures that the Service follows internally.

And the certificates of assessment and collection that were filed with Respondent's motion to dismiss reflect on there that the Service had prepared a—the return on behalf of the taxpayer and nothing else.

There is nothing there—you know, that is an official document with seal that indicates that that is the status of the case. There is nothing there to indicate that that was withdrawn or that the Service had determined that she didn't owe income tax.

It is just another argument that really has no merit. And so we would ask the Court to dismiss the petition in this case.

With respect to the motion for damages—again, it is our point that these arguments are meritless.

going to move with respect, you have 45 days.

THE COURT: That is the rules of this Court you are quoting there—it is not a law.

MS. OKON: That is the rules of this Court, and it is very clear. It says that upon good grounds you can get an extention of time and the Court has a discretion to grant the extension of time.

In this particular case, there were no grounds given whatsoever. There still to this day have been no grounds given why it was not timely.

I am saying that the motion to dismiss was not timely, should be stricken from the record. Conversely, if you do not strike it from the record, any defect in my petition should be waived by virtue of the fact that it was not timely.

THE COURT: I will consider both those arguments:

MS. OKON: I would like a ruling from the Court on this today, if I might.

THE COURT: I will so rule when I come down with my—a disposition of the motion—Respondent's motion. I do not intend to rule at this time.

MS. OKON: Okay. Finally, I would like to address the matter of the individual master file records, which counsel seems to say I am misunderstanding or

misinterpreting and he has some knowledge that I don't have. And I am disagreeing with him.

Not only do these individual master file records state that I don't have a filing requirement, they state I don't have a tax liability. And they state that the notice of deficiency were mailed in error.

I have the 6209 document, which is a decoding manual. I have spent time studying the manual. I have spent time trying to figure out what tax it is that is being applied here, and I can't quite figure it out, and nobody wants to tell me. I would like to know.

But certainly, unless the 6209 manual is lying to the Internal Revenue Service agents that have to use it, what I am getting from it is—at page 864 it talks about filing requirement codes.

I have my individual master file record. I got it under the Freedom of Information Act. It came to me in the middle of February. I have the cover letter that came with it.

I didn't have time to look into it until two weeks ago. And as soon as I had decoded it, I sent a copy of it, along with all of the pages of the 6209 document, to counsel for the Internal Revenue Service.

And I said, it appears as though I don't have a filing requirement. I don't owe a tax. I don't know what

we are doing here. Here is a stipulated motion to dismiss. I would appreciate your signing it.

And I didn't hear from him, so I called. And he stated to me, I believe you are misunderstanding the 6209 document. I said, Well, why don't you explain it to me. And he said, Well, I can't. I don't understand it either, but I am quite sure that you are in error.

That is kind of the way this thing works. You ask for explanations and you don't get any. You get things like, Everybody knows you are supposed to. You don't get, This section of the Code is what makes you liable. This is the tax for which you are supposed to be paying us. You don't get any of that. You get a whole lot of runaround.

THE COURT: Be specific, Ms. Okon. Are you talking about this Code 590 that Mr. Eagan mentioned?

MS. OKON: Yes, sir.

THE COURT: And Code 18?

MS. OKON: It is document 6209, and on page 864 of document—

THE COURT: Of the—of what? Give me a reference. I will look at it.

MS. OKON: I have marked this Petitioner's Exhibit 18 for identification purposes—

THE COURT: Well, it is not an exhibit in this

case. Cite the document—cite me what you want me to look at, and I will look at it. I will have my clerks find it, and I will look at it, Ms. Okon.

MS. OKON: This is a segment of the 6209 document. This is page 864 of it. It is titled IMF Filing Requirement Codes for Form 1040, U.S. Individual Income Tax Returns.

On my individual master file records, I have an MFR 01. That means mail file requirement 01. The document explains that as being return not required to be mailed or filed.

By not mailing, it is talking about the Commissioner. The Commissioner does not have to mail me one, and I do not have to file one.

I have two transaction code 494s on the individual master file records. What happened here is that the Commissioner sent the first set of notices of deficiency to my former address, despite the clear and concise notice. And they didn't send it by certified mail. I didn't have to sign for anything. It just arrived forwarded by the post office to me.

Then they sent out a second set. They sent that out two months later, again to the wrong address. Now, I haven't made a mystery of where I am. I have a big sign out where I am. I have said, Here I am. Please, you

know, correspond with me at this address. And they are not doing it, and I don't understand why, and I don't understand why they shouldn't have to.

They there is a code in here, 495. This says it has two meanings: closure of notice of delinquency or notice of deficiency processed in error. It is not as simple as counsel for Respondent states. It is not merely a matter of the closing code 88, the fact that a substitute was filed.

Because I asked for these individual master file records last year, and they had already filed a substitute for return, and it did not have that on there.

This determination was made after there—my records were sent to the examination division. Only after it was examined was it determined that I did not have a filing requirement and I didn't owe a tax.

Then there is a Code 590 on the individual master file. The Code 590 is explained on page 827 of the 6209 document.

It says, Not liable this tax period. Satisfies this module only. This module refers to the entire year of '85 and '86.

I did not just send for '85 and '86 when I sent for these records. I sent for a number of years. I sent for '87, '88, '89, '90. I got them all back.

made by you here today.

MS. OKON: Your Honor, may I read this statement into the record?

THE COURT: No. You cite me that section, and I will look at it, but I see no sense in you standing there reading it in here.

MS. OKON: I see.

THE COURT: All right?

MS. OKON: Okay.

THE COURT: Do you have anything further?

MS. OKON: Well, now, basically you are saying that, despite the individual master file records, which say I don't owe a tax and have no filing liability, you may still have jurisdiction to decide that I owe a tax, despite the Commissioner's determination already made?

THE COURT: I certainly do.

MS. OKON: All right. The only other thing that I would point out to Your Honor is that you denied my very, very, simple, modest request—informal request for discovery. I asked for five items.

Not even the Respondent raised the objection that it was unduly burdensome. The Court took it upon himself to supply that reason for denying me five documents.

THE COURT: I believe that what I did was I

smart.

THE COURT: Well, maybe your problem is that you are trying to find some technical reason to avoid payment of the taxes imposed upon you.

MS. OKON: Not at all. I looked at the Code of Federal Regulations. I looked at the OMB number that applied to Section 1.1-1, and it is a form, apparently applying to Subtitle A for foreign-earned income. It is Form 2555.

THE COURT: Normally, what I—I am going to do something that I don't normally do in a situation like this. But I am going to permit you, and Mr. Eagan if he wishes, within the next 30 days to file with me—being a paralegal you know what a memorandum of law is.

MS. OKON: Yes, sir.

THE COURT: I want a memorandum of law. I am talking about law, not argument in the sense that you just reach up there and pull a piece out here and there. Give me some authority for trying to rule in your favor on this motion.

MS. OKON: Am I allowed—

THE COURT: Right now I am inclined to grant Mr. Eagan's motion.

MS. OKON: Am I allowed to present anything about the individual master file records?

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think you are going to get anywhere with it.

MS. OKON: Well, as long as you will not be too upset if I appeal your decision, I don't mind.

THE COURT: Why, an appeal doesn't bother me. You just go right ahead.

And Mr. Eagan, do you wish to file a memorandum of law?

MR. EAGAN: Well, I guess I will, Your Honor.

THE COURT: All right.

THE CLERK: Thirty days from today would be April 15, 1992.

THE COURT: That is a good day.

MS. OKON: Your Honor, may I be able to introduce into evidence the individual master file records, at least?

THE COURT: Cite those records.

MS. OKON: Why can the Court not accept them?

THE COURT: There is no sense in cluttering up my file with that. Just cite it and my clerks will dig them out for me, and I will look at them. Just cite the book and page that you want me to look at.

MS. OKON: I don't believe your clerks will have access to my computer records in the Internal Revenue Service computer system.

THE COURT: All right. If you wish to do so.

APPENDIX F
EXCERPTS FROM BRIEF FOR APPELLANT, STATEMENT OF THE CASE

OKON V. COMMISSIONER OF INTERNAL REVENUE IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Docket No. 18247-91

I
STATEMENT OF THE CASE

This is an appeal by Christa M. Okon [Okon], Appellant, a resident of the State of New Mexico, from a final decision of the United States Tax Court imposing taxes based upon Okon's 1985 and 1986 earnings under unspecified tax laws, and imposing penalties and fines. The Court's final Order and Decision, entered April 23, 1993 [Doc.18], contradicts Okon's 1985 and 1986 IRS Individual Master File [IMF] records reflecting a determination that Okon had no Form 1040 filing requirement and owed no taxes for the years at issue, and that the Notices of Deficiency which led to Okon's petitioning the Tax Court had been processed in error. The very heart of this case asks whether the federal government should be permitted to collect taxes which are not imposed by identifiable statutes. Okon's appeal asks that this Honorable Tribunal set aside and vacate the Tax Court's Memorandum Opinion and its final Order for want of jurisdiction.

The Court's January 21, 1993 Memorandum Opinion makes no findings that Okon owed income taxes or that she had a duty to file Form 1040 returns for 1985 or 1986. The January 27, 1993 Order [Doc.16] was likewise silent on these issues. Okon filed a motion to vacate [Doc.17] subsequently resulting in the entry of a second Order April 23, 1993 [Doc.18], which was also

contradicted the non-liability determinations reflected in Okon's IMF records. Okon's renewed motion to vacate [Doc.19] the [amended] order was denied May 28, 1993. Okon's Notice of Appeal was filed August 27, 1993, having been mailed to the Tax Court on August 24, 1993, within the permitted ninety day period for filing a notice of appeal. This Court's jurisdiction is predicated on 26 U.S.C. 7482(a). Tax Court jurisdiction arose pursuant to 26 U.S.C.A. foll. 7453.

APPENDIX G
26 C.F.R. 1.1-1, TAX ON INDIVIDUALS

(a) General rule. (1) Section 1 of the Code imposes an income tax on the income of every individual who is a citizen or resident of the United States and, to the extent provided by section 871(b) or 877(b), on the income of a nonresident alien individual. For optional tax in the case of taxpayers with adjusted gross income of less than $10,000 (less than $5,000 for taxable years beginning before January 1, 1970) see section 3. The tax imposed is upon taxable income (determined by subtracting the allowable deductions from gross income). The tax is determined in accordance with the table contained in section 1. See subparagraph (2) of this paragraph for reference guides to the appropriate table for taxable years beginning on or after January 1, 1964, and before January 1, 1965, taxable years beginning after December 31, 1964, and before January 1, 1971, and taxable years beginning after December 31, 1970. In certain cases credits are allowed against the amount of the tax. See Part IV (section 31 and following), Subchapter A, Chapter 1 of the Code. In general, the tax is payable upon the basis of returns rendered by persons liable therefor (Subchapter A (sectins 6001 and following), Chapter 61 of the Code) or at the source of the income by withholding. For the computation of tax in the case of a joint return of a husband and wife, or a return of a surviving spouse, for taxable years beginning before January 1, 1971, see section 2. The computation of tax in such a case for taxable years beginning after December 31, 1970 is determined in accordance with the table contained in section 1(a) as amended by the Tax Reform Act of 1969. For other rates of tax on individuals, see section 5(a). For the imposition of an additional tax for the calendar years 1968, 1969, and 1970, see section 51(a).

(Remainder of regulation omitted)

APPENDIX H
RULE 13, RULES OF PRACTICE, U.S. TAX COURT JURISDICTION

"(a) Notice of Deficiency or of Transferee or Fiduciary Liability Required: Except in actions for declaratory judgment, for disclosure, for readjustment or adjustment of partnership items, or for administrative costs (see Titles XXI, XXII, XXIV, and XXVI), the jurisdiction of the Court depends (1) in a case commenced in the Court by a taxpayer, upon the issuance by the Commissioner of a notice of deficiency in income, gift or estate tax or, in the taxes under Code Chapter 41, 42, 43 or 44 (relating to excise taxes on certain organizations and persons dealing with them), or in the tax under Code Chapter 45 (relating to the windfall profit tax), or in any other taxes which are subject to the issuance of a notice of deficiency by the Commissioner; and (2) in a case commenced in the Court by a transferee or fiduciary, upon the issuance by the Commissioner of a notice of liability to the transferee of fiduciary. See Code Sections 6212, 6213, and 6901.